

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTOINE DESHAWN BARNES,

Petitioner,

v.

UNITED STATES PRESIDENT TRUMP,

Respondent.

Case No. 1:20-cv-01126-JDP

FINDINGS AND RECOMMENDATIONS TO
DISMISS PETITION FOR FAILURE TO
STATE A COGNIZABLE CLAIM

OBJECTIONS DUE IN THIRTY DAYS

ECF No. 1

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

Petitioner Antoine Deshawn Barnes, III, a state prisoner without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. This matter is before us for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). Courts have “an active role in summarily disposing of facially defective habeas petitions” under Rule 4. *Ross v. Williams*, 896 F.3d 958, 968 (9th Cir. 2018) (citation omitted).

Discussion

A federal court “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in

1 custody in violation of the Constitution or laws or treaties of the United States.”
 2 28 U.S.C. § 2254(a). To pass initial screening under Rule 4, petitioner must allege a violation of
 3 “clearly established federal law”—meaning a violation of a U.S. Supreme Court holding. *See*
 4 *White v. Woodall*, 572 U.S. 415, 419 (2014). Habeas relief is not available where a favorable
 5 judgement would not “necessarily lead to [a petitioner’s] immediate or earlier release from
 6 confinement.” *See Nettles v. Grounds*, 830 F.3d 922, 935 (9th Cir. 2016).

7 Petitioner seeks to patent, *inter alia*, his name, face, body, image, and “thumbs up” logo.
 8 *See generally* ECF No. 1. Petitioner makes no other claims for relief. Petitioner’s claim is not
 9 cognizable on habeas review; he does not challenge the fact or duration of his custody, he has not
 10 alleged a violation of clearly established federal law, and he has not shown that success on his
 11 claim will lead to his earlier release. Accordingly, we recommend that the petition be summarily
 12 dismissed.¹

13 **Certificate of Appealability**

14 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
 15 court’s denial of a petition; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253;
 16 *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254 Cases
 17 requires a District Court to issue or deny a certificate of appealability when entering a final order
 18 adverse to a petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d
 19 1268, 1270 (9th Cir. 1997). Where, as here, the court denies habeas relief on procedural grounds
 20 without reaching the underlying constitutional claims, the court should issue a certificate of

21 ¹ There are additional reasons to summarily dismiss the petition. Petitioner states that he has not
 22 exhausted his claim before the state-courts, as required by 28 U.S.C. § 2254(b)(1). ECF No. 1 at
 23 5-6; *see O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Duncan v. Henry*, 513 U.S. 364, 365
 24 (1995). Moreover, petitioner has a different habeas petition pending before this court. *See*
 25 *Barnes v. CA Dept. Corrections Dir.*, No. 1:20-cv-00836-NONE-JDP (E.D. Cal. June 1, 2020).
 26 To the extent that petitioner is attempting to challenge the same conviction and raise the same
 27 claims in these petitions, the instant petition is considered second or successive. Due to the vague
 28 nature of petitioner’s claims in the instant petition, we cannot, at this time, determine whether the
 petition is second or successive. However, in the event that petitioner is attempting to challenge
 the same conviction and raise the same claims in both petitions, he is forewarned that he must
 have leave from the Ninth Circuit Court of Appeals to proceed with such a petition. *See* 28
 U.S.C. § 2244(b)(3)(A); *Henry v. Spearman*, 899 F.3d 703, 705 (9th Cir. 2018).

1 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
2 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
3 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
4 “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of
5 the case, a reasonable jurist could not conclude either that the district court erred in dismissing the
6 petition or that the petitioner should be allowed to proceed further.” *Id.* Here, reasonable jurists
7 would not find our conclusion debatable or conclude that petitioner should proceed further. Thus,
8 the court should decline to issue a certificate of appealability.

9 **Findings and Recommendations**

10 We recommend that the petition be dismissed, ECF No. 1, and that the court decline to
11 issue a certificate of appealability. We submit the findings and recommendations to the U.S.
12 District Court judge who will be assigned to the case under 28 U.S.C. § 636(b)(1)(B) and Rule
13 304 of the Local Rules of Practice for the United States District Court, Eastern District of
14 California. Within thirty days of the service of the findings and recommendations, petitioner may
15 file written objections to the findings and recommendations with the court and serve a copy on all
16 parties. That document must be captioned “Objections to Magistrate Judge’s Findings and
17 Recommendations.” The assigned district judge will then review the findings and
18 recommendations under 28 U.S.C. § 636(b)(1)(C).

19 **Order**

20 The clerk of court is directed to assign this case to a district judge for the purposes of
21 reviewing these findings and recommendations.

22
23 IT IS SO ORDERED.

24 Dated: August 21, 2020


UNITED STATES MAGISTRATE JUDGE

26
27 No. 206.
28